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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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ROY JOHNSON,

No. C 10-04633 JSW

Plaintiff,

**ORDER ACCEPTING “DUE
PROCESS” BRIEF AS SECOND
AMENDED COMPLAINT AND
DISMISSING ACTION WITH
PREJUDICE**

v.

COUNTY OF MONTEREY,

Defendant.

15 On March 9, 2012, this Court issued an Order granting Defendant’s motion to dismiss.
16 (Docket No. 40 (Order Granting Motion to Dismiss First Amended Complaint).) Plaintiff had
17 asserted a claim that Defendant violated his due process rights, which he brought pursuant to 42
18 U.S.C. § 1983. The Court dismissed that claim, because Plaintiff had not alleged facts to show
19 that Defendant had a custom, policy or practice relating to the alleged constitutional violations.
20 (See *id.* at 7:1-8:2.) However, the Court granted Plaintiff one final opportunity to amend, and it
21 directed that Plaintiff file his amended complaint by no later than April 27, 2012.

22 On April 9, 2012, the Court received an envelope of materials from Plaintiff. According
23 to the proof of service submitted with those materials, Plaintiff submitted a “due process brief”
24 and “various attachments.” The Court only received pages 17 and 18 of the purported brief.
25 Because the Court did not receive a complete copy of the “due process brief,” the Court could
26 not construe the documents it did receive as an amended complaint. As such, it required
27 Plaintiff to file a complete copy of his brief by April 20, 2012, if he wanted the Court to
28 consider it.

United States District Court
For the Northern District of California

1 On April 18, 2012, the Court received a fully copy of the due process brief, which shall
2 be filed forthwith. The Court liberally construes this brief to be Plaintiff's Second Amended
3 Complaint. When Plaintiff filed his original complaint, he was granted leave to proceed *in*
4 *forma pauperis*, pursuant to 28 U.S.C. § 1915. The *in forma pauperis* statute provides that the
5 Court shall dismiss the case if at any time the Court determines the action (1) is frivolous or
6 malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief
7 against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

8 The Court has reviewed the Second Amended Complaint. Plaintiff still fails to allege
9 any facts that show the Defendant has a custom, policy or practice that relates to his alleged
10 violations of his due process rights. Accordingly, Plaintiff still fails to state a claim against the
11 Defendant under 42 U.S.C. § 1983. *See Monell v. New York City Dep't of Social Services*, 436
12 U.S. 658, 691 (1978); *Blair v. City of Pomona*, 223 F.3d 1074, 1079 (9th Cir. 2000); *Oviat v.*
13 *Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992). The Court also advised Plaintiff that it was his
14 final opportunity to amend his claims. Having failed to state a claim, the Court DISMISSES
15 this action WITH PREJUDICE.

16 The Court shall issue a separate judgment, and the Clerk shall close this file.

17 **IT IS SO ORDERED.**

18 Dated: April 20, 2012



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ROY JOHNSON.

Case Number: CV10-04633 JSW

Plaintiff,

CERTIFICATE OF SERVICE

v.

COUNTY OF MONTEREY et al.,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

13 That on April 20, 2012, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
delivery receptacle located in the Clerk's office.

17 Roy Johnson
P.O. Box 5371
18 Corning, CA 96021

20 | Dated: April 20, 2012

Jennifer Ottolini

Richard W. Wiekling, Clerk
By: Jennifer Ottolini, Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ROY JOHNSON,

Plaintiff,

Case Number: CV10-04633 JSW

CERTIFICATE OF SERVICE

V.

COUNTY OF MONTEREY et al,

Defendant.

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Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk